



**FILED**  
Jan 09 2009, 8:46 am  
*Bryan L. Smith*  
**CLERK**  
of the supreme court,  
court of appeals and  
tax court

**BROWN, Judge**

Terrance Figueroa appeals his sentence for robbery as a class B felony.<sup>1</sup> Figueroa raises two issues, which we restate as:

- I. Whether the trial court abused its discretion in sentencing Figueroa; and
- II. Whether Figueroa's sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. In June 2007, the State charged seventeen-year-old Figueroa with robbery as a class B felony, theft as a class D felony, attempted robbery as a class B felony, attempted theft as a class D felony, and battery as a class C felony. Figueroa pled guilty to robbery as a class B felony related to the robbery of Dolan Hoeft, and the State agreed to dismiss the remaining charges, including charges related to the robbery of Gregory Depew. Under the plea agreement, the executed sentence was capped at ten years. Figueroa admitted to taking money from Dolan Hoeft while armed with a pellet gun.

At the sentencing hearing, the trial court considered three mitigators: (1) Figueroa's guilty plea; (2) his young age; and (3) the letters received on Figueroa's behalf and his family and community support. The trial court found several aggravators, including: (1) Figueroa's criminal history; (2) his history of illegal alcohol and drug use; (3) the fact that prior attempts at rehabilitation have been unsuccessful; (4) Figueroa's "relatively high" Level of Service Inventory-Revised ("LSI-R") score; and (5) the effect

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<sup>1</sup> Ind. Code § 35-42-5-1 (2004).

of the crime of Figueroa's victim. Transcript at 56. The trial court also noted that Figueroa was on probation at the time of the offense and that "this is a minimum non[-]suspendable case." Id. The trial court then sentenced Figueroa to fifteen years with ten years executed, the last two years executed through community corrections, and five years of probation.

## I.

The first issue is whether the trial court abused its discretion in sentencing Figueroa. The Indiana Supreme Court has held that "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). We review the sentence for an abuse of discretion. Id. An abuse of discretion occurs if the decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." Id. A trial court abuses its discretion if it: (1) fails "to enter a sentencing statement at all;" (2) enters "a sentencing statement that explains reasons for imposing a sentence – including a finding of aggravating and mitigating factors if any – but the record does not support the reasons;" (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration;" or (4) considers reasons that "are improper as a matter of law." Id. at 490-491. If the trial court has abused its discretion, we will remand for resentencing "if

we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” Id. at 491. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion. Id.

Figueroa first argues that the trial court abused its discretion by considering the impact on a victim as an aggravator. Figueroa argues that the trial court considered the impact on Depew but that the charges related to Depew were dismissed as part of the plea agreement. The conviction related only to the robbery of Hoeft. We held in Farmer v. State, 772 N.E.2d 1025, 1027 (Ind. Ct. App. 2002), that a trial court abuses its discretion by considering facts of a charge dismissed as part of a plea agreement as an aggravating factor during sentencing. On appeal, the State concedes that the trial court abused its discretion by considering the impact on Depew as an aggravating factor. Consequently, we conclude that the trial court abused its discretion by considering this aggravator.

Figueroa next argues that the trial court abused its discretion by considering his LSI-R score as an aggravator. We recently addressed this same argument in Rhodes v. State, 896 N.E.2d 1193, (Ind. Ct. App. 2008). We held:

The use of a standardized scoring model, such as the LSI-R, undercuts the trial court’s responsibility to craft an appropriate, individualized sentence. Relying upon a sum of numbers purportedly derived from objective data cannot serve as a substitute for an independent and thoughtful evaluation of the evidence presented for consideration. As our Supreme Court recently noted in discussing the appellate review of sentences, “[a]ny effort to force a sentence to result from some algorithm based on the number and

definition of crimes and various consequences removes the ability of the trial judge to ameliorate the inevitable unfairness a mindless formula sometimes produces.” Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008). Therefore, it is an abuse of discretion to rely on scoring models to determine a sentence.

896 N.E.2d at 1195. We concluded that “use of an LSI-R score as an aggravating factor is improper as a matter of law.” Id. Consequently, we conclude that the trial court abused its discretion by considering Figueroa’s LSI-R score as an aggravating factor.

Although we have concluded that the trial court abused its discretion by considering two factors as aggravating, we will remand for resentencing only “if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” Anglemyer, 868 N.E.2d at 491. Here, in addition to the two improper aggravators, the trial court also considered three other aggravators – Figueroa’s criminal history, his history of illegal alcohol and drug use, and the fact that prior attempts at rehabilitation have been unsuccessful – and noted that Figueroa was on probation at the time of the offense. The trial court considered three mitigators: (1) Figueroa’s guilty plea; (2) his young age; and (3) the letters received on Figueroa’s behalf and his family and community support.

The two improper aggravators seem relatively insignificant given Figueroa’s sizeable criminal history, long standing drug abuse, and lack of success with prior rehabilitation attempts, as discussed below. As a result, we can say with confidence that the trial court would have imposed the same sentence regardless of the two improper aggravators. See, e.g., Drakulich v. State, 877 N.E.2d 525, 535 (Ind. Ct. App. 2007)

(holding that we could say with confidence that the trial court would have imposed the same sentence if it considered only the proper aggravators), trans. denied.

## II.

The next issue is whether the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Figueroa requests that we remand for a sentence not to exceed the advisory sentence of ten years.

Our review of the nature of the offense reveals that Figueroa admitted to taking money from Dolan Hoeft while he was armed with a pellet gun. Our review of the character of the offender reveals that seventeen-year-old Figueroa has a sizeable criminal history. In 2003, as a juvenile, Figueroa was charged with an offense that would be battery as a class B misdemeanor if committed by an adult and was given a diversion with community service. In 2005, Figueroa was charged with offenses that would be battery as a class A misdemeanor and disorderly conduct as a class B misdemeanor if committed by an adult. Figueroa was adjudicated a delinquent and placed on probation. In 2006, Figueroa was again adjudicated a delinquent for the offense of minor in possession of alcohol. Figueroa’s conditions of probation were modified as a result of

the latter offense. Petitions for modification of the dispositional decree were later filed because Figueroa had been expelled from school, failed a urine drug screen by testing positive for alcohol, and committed additional offenses. As an adult, Figueroa was charged with operating a vehicle while never receiving a license as a class C misdemeanor, and that charge was pending at the time of the instant offense.

At the sentencing hearing, the State presented photographs of Figueroa holding guns and flashing gang signs. The presentence investigation report indicates that Figueroa started drinking alcohol at the age of nine and was drinking alcohol daily between the ages of fourteen and seventeen. Figueroa started using drugs at the age of eleven and smoked six to seven marijuana “blunts” a day between the ages of eleven and sixteen. Appellant’s Appendix at 90. He also experimented with cocaine between the ages of fourteen and fifteen. Figueroa was twice court-ordered to participate in substance abuse counseling, but did not complete the counseling. According to Figueroa, he committed the robbery out of frustration with his family’s financial circumstances.

Although Figueroa had significant support at the sentencing hearing from family and friends, and testimony was presented that the robbery offense was out of character, given his criminal history, substance abuse, and lack of success with prior rehabilitation attempts, we cannot say that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender.

For the foregoing reasons, we affirm Figueroa’s sentence for robbery as a class B felony.

Affirmed.

ROBB, J. and CRONE, J. concur